IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 604

DIVISION 1287 OF THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, ET AL., *Appellants*.

v.

STATE OF MISSOURI, *Appellee*.

On Appeal From the Supreme Court of Missouri

REPLY BRIEF FOR APPELLANTS

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I. FEDERAL SUPERSESSION

1. Appellee's essential theme is that seizure and the consequent prohibition of the strike are "temporary" in duration limited to the period of the "emergency" and may be ended sooner than settlement of the labor dispute (br. pp. 29, 31, 32, 37, 39, 48, 50, 52). The theme rests on the statement of the court below that "Seizure and injunctive relief are provided only in emergency

situations. We must and do construe the term 'emergency' to imply a temporary situation and necessarily dependent upon the particular facts of the particular case under consideration" (R. 184). The apparent thrust of the theme is that since seizure need not last forever, the prohibition of the strike for an indeterminate period does not impair the exercise of the federal right.

The theme can hardly survive its statement. The court below rendered its opinion almost eleven months after seizure but its judgment did not disturb its continuance. We have therefore an authoritative judicial determination that seizure does not endure too long if it lasts eleven months. The Governor of Missouri did not vacate the seizure until three months later. We have therefore an authoritative executive determination that seizure can last at least as long as fourteen months. And since seizure was vacated without any change in the underlying situation which originally caused its institution, there is no basis for belief that a renewed strike would not recreate the "emergency" and bring about reimposition of seizure.

Reduced to concrete terms, therefore, appellee claims that it is free to prohibit the strike for fourteen months, and then suspend the prohibition but without relinquishing the power to reinstitute it. This is the practical equivalent of a flat ban. Even disregarding the danger of a resumed interdict of the strike, suppression for fourteen months destroys the efficacy of the strike as the "'force depended upon to facilitate arriving at satisfactory agreements.'"[1] A concrete bargaining situation existing in the present cannot be

[1] *N.L.R.B.* v. *Lion Oil Co.*, 352 U.S. 282, 291.

influenced by a strike which cannot take place until fourtgen months later. The bargaining situation cannot be put in storage, with the strike as a deadlock-breaking instrument interred for fourteen months, and with the hope of current enjoyment of improvements abandoned for the long interval. Settlement upon whatever terms the employees can obtain without the backing of a strike is the inevitable consequence. In each of the eight utility seizures other than the instant one, settlement was reached before seizure was lifted, well before the elapse of fourteen months, and hence well before the impact of a strike threat could exert itself. No employer is so timorous that he fears a strike which cannot eventuate until an indeterminate future. In this case at this writing, settlement has not been effectuated simply because the employees determinedly committed themselves to a fight for vindication of their federal right to strike and to a refusal to accept an accord which did not reflect the untrammelled influence of that right. But once granted that the seizure-no-strike formula is valid, there is no realistic alternative to submission to settlement which is the product of emasculized negotiation. It is idle cant for appellee to assert that "Collective bargaining is not interfered with at all by the State's seizure and operation of the Company's property" (br. pp. 37, 51-52).

It thus palliates nothing for appellee to claim that the "right to use the strike weapon is postponed" (br. p. 38), "not prohibited" (br. p. 51), and that the statute "merely affects the timing of its use" (br. p. 52). It is not even accurate to say that resort to a strike is simply "postponed," for unless the Governor is persuaded that "upon the particular facts of the par

ticular case under consideration" the "emergency" has ceased (R. 184), the postponed event never arrives; and if it does arrive, it comes as so late, unpredictable, and undependable an eventuality that it is practically meaningless. This aside, assuming a genuinely limited postponement of determinable duration, appellee's position is no better taken. This Court invalidated a far milder Michigan statute, which suspended recourse to a strike pending state mediation efforts and strike authorization by a majority vote of the employees in the unit, because "it conflicts with the federal Act." *U.A.W.* v. *O'Brien*, 339 U.S. 454, 458. This Court explained that (*ibid.*):

> The Michigan law calls for a notice given "In the event the parties . . . are unable to settle any dispute" to be followed by mediation, and if that is unsuccessful, by a strike vote within twenty days, with a majority required to authorize a strike. Under the federal legislation, the prescribed strike notice can be given sixty days before the contract termination or modification. § 8(d). The federal Act thus permits strikes *at a different and usually earlier time* than the Michigan law; and it does not require majority authorization for any strike. [Emphasis supplied.]

The same conflict which prohibited Michigan also forbids Missouri from postponing a strike to a different and later time than is federally prescribed. The only difference between *O'Brien* and this case, other than the much harsher impact of Missouri's command, is that in *O'Brien* auto workers struck a car manufacturer and in this case bus drivers and mechanics struck a transit company. But "Creation of a special classification for public utilities is for Congress, not for this Court." *Amalgamated Association*, 340 U.S. at 392-

393. Contrary to appellee's claim, there is no question of giving "utility employees a preferred status" (br. p. 32); appellants desire to preserve for them the same status that Congress has vouchsafed all employees; it is appellee who would impose inferior rank on the utility worker. Whether that subordination should be accomplished is for Congress.[2]

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[2] In the present session of Congress Senator Holland has again introduced a bill, pertaining to "an employer engaged in the business of furnishing water, gas, electric power, or passenger transportation services to the public," which would amend section 14 of the National Labor Relations Act to provide that "Nothing in this Act or the Labor-Management Relations Act, 1947, shall be construed to nullify the provisions of any State or territorial law which regulate or prohibit strikes by employees of a public utility, or which regulate or prohibit lockouts by a public utility." S. 169, 88th Cong., 1st Sess. (Jan. 14, 1963).

Appellee quotes a 1953 statement of Senator Taft that "I may say that we never intended any preemption of the field. The Supreme Court has gone beyond what we intend" (br. p. 49), and amicus Kansas City Power & Light Company quotes another statement of Senator Taft in the same hearing that "I do not offhand see why the State cannot handle a local public utilities strike, a streetcar strike, or anything else, as well as the Federal Government" (br. p. 16). The first remark pertained to preemption in general unrelated to the utility field, and the second remark was followed by Senator Taft's unquoted further statement that "I do not know whether we should turn that back to the States. Do you think there should be some legislation at least to stop this preemption doctrine?" Hearings before Senate Labor Committee on Proposed Revisions of the Labor Management Relations Act, 1947, 83d Cong., 1st Sess., 721 (1953). Thus, Senator Taft clearly recognized that the question was within the legislative domain; plainly acknowledged by his statement that he did "not know whether we should turn that back to the States," that the States had no present power to act; and invited opinion as to whether legislation was needed. In any event, Senator Taft's post-legislative remarks are, the kind of "subsequent legislative materials [which] are neither appropriate nor relevant guides to interpretation of prior enactments . . ." *F.T.C. v. Sun Oil Co.*, 31 L.W. Law Week 4055, 4059, n. 11 (S. Ct., Jan. 14, 1963).

In short, the best that appellee can say is that it has mutilated but not destroyed the right to strike. But a federal right which does not brook its extinction cannot tolerate its crippling.[3]

2. What we have said answers appellee's related contention that it has merely engaged in selective suppression of the right to strike. The claim rest on its assertion that since the enactment of the King-Thompson Act, of the thirty labor disputes which it classifies as an actual or threatened utility strike, seizure was instituted in but nine (br. pp. 26, 46). The contention is irrelevant even if the representation is accurate. The employees represented by the Union have been forbidden to strike each of the three times they threatened to do so. Seizure swiftly followed each threat. For these employees suppression of the strike has been total. It is no answer to their protest to infringement of their right to strike to respond that others have been left alone. The same is true of every utility worker whose right to strike has been blocked by seizure. And even as to utility workers who have been allowed to strike, they never know that the axe may not fall on them. Those utility workers who have actually or potentially been prohibited from striking

[3] Since it cannot show that the strike continues to exist as a viable, meaningful instrument, appellee has wholly failed to respond to the proposition that suppression of the strike, without substituting a compensating equivalent for it, is incompatible with the Fourteenth Amendment (br. pp. 51-53). And appellee's insistence that the abstract right to quit, despite circumstances which prevent its exercise, is enough to preclude involuntary servitude (br. p. 53), ignores the meaning "of freedom as 'the condition of being able to choose and carry out purposes.' This includes . . . the idea of actual ability with available means, or effective freedom *to* do what one wishes. . . ." Muller, Freedom in the Western World, xiii (1963).

have surely suffered the loss of their federal right. The wrong to them is not alleviated or excused because others are unmolested.[4]

Nor is it at all clear that the twenty-one strikes classified by appellee as "Non-Seizure Cases under the King-Thompson Act" (R. 197) are representative of a conventional utility strike to secure improved contract terms. Sixteen of these strikes, for the period through August 12, 1958, are described by the Missouri State Board of Mediation in Twelve Years Under the King-Thompson Act, 1947-1959, pp. 24-27 (1959), reproduced at pages 36-39 of appellee's brief in *Local No. 8-6, Oil, Chemical & Atomic Workers Union* v. *Missouri*, 361 U.S. 363. Of the sixteen, two do not seem to be within the coverage of the King-Thompson Act, since they apparently pertain to local cartage or over-the-road motor freight transportation (items 1, 4); nine appear to be strikes over grievances during the contract term, probably in contravention of an express or implied no-strike commitment, and hence probably unsanctioned by the bargaining representative (items 2-3, 5-7, 10, 13-15); and one was a strike over contract terms but unauthorized by the bargaining representative (item 8). This leaves four of the sixteen as authorized utility strikes to secure improved contract terms (item 9, 11-12, 16), and three of these four lasted one day or less (items 9, 12, 16). In short, through August 1958, of thirteen authorized utility strikes to secure improved contract terms, seizure was imposed in nine, yielding a suppression rate of 69 percent. This is suppression enough.

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[4] *Cf. Schneider* v. *Irvington*, 308 U.S. 147, 163: "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place."

3. "Emergency" is appellee's claimed dominating justification—not just any kind of "emergency" but "[o]nly a particular, special kind of emergency" "sufficient to create a threat of imminent disaster" (br. p. 25). But the record shows without dispute, and appellee does not contest, that the principal component of the "emergency" was apprehension that a transit strike would substantially curtail retail sales in the downtown area of Kansas City, Missouri (our brief, pp. 12-13, 37 and n. 6). Thus, translating appellee's rhetoric, impairment of retail trade spells "disaster." Evidently troubled that hyperbole and fact do not match, amicus Kansas City Power & Light Company notes that the existence in truth of an emergency as a result of a transit strike "is arguable," but to shore up the future quickly cautions that "collapse of gas or electric services" would indeed be "disastrous" (br. pp. 18-19). In the court below, presumably willing to scrap prohibition of a transit strike in order to prevent risking total invalidation of the seizure-no-strike device, amici representing The Gas Service Company were emphatic that "the record shows nothing more than minor public inconvenience and some reduction in downtown retail sales as a result of the interruption of transit operations" (br. p. 21).

These diversified positions expose the illusion that the label "emergency" is analytically meaningful. In a labor dispute "emergency" is a much bandied emotional catchword having greater political dimension than economic content.[5] Once the momentum of its emotionalism is loosed it is extremely hard to contain. "The predilection for finding emergencies penetrates

[5] Horlacher, *A Political Science View of National Emergency Disputes*, 333 Annals Amer. Acad. Pol. Soc. Sci. 85, 87-89 (1961)

the courts and the cloisters of scholarship, domains where objectivity is supposed to reign. It is not only present among the partisans and in the press, where the impulse to dramatize is difficult to resist."[6] Congress in 1947 was fully aware both of the rightful claims which can be made and the inevitable excesses which can be incited in the name of emergency. Faced with the concrete need to choose among competing values, Congress drew the line at federal regulation of national emergency disputes by the 80-day injunction, and rejected the use of an emergency as a validating source of state intercession in a labor dispute. As this Court has said, at root are "debatable policy questions," but these "are for legislative determination and have been resolved by Congress adversely" to appellee. *Amalgamated Association*, 340 U.S. at 397.

4. It does not advance appellee's position for it to note that the Governor's opinion that jeopardy exists is subject to judicial review (br. pp. 43, 47). State entry into the field that Congress has occupied is not validated by making the state courts part of the scheme. Judicial review of an executive determination of jeopardy is in any event illusory. In the normal and predictable course of events, as this case illustrates, the Governor's proclamation is followed by an immediate restraining order in the event of a strike; a trial on the application for a temporary injunction is held about two weeks later; pending decision after trial the restraining order is continued in effect; final *nisi prius* determination is announced ten weeks after trial; and eight months after that the appeal is decided (our brief, pp. 13-14). It is highly unlikely that any *nisi prius* state court would find that jeopardy did not exist and

[6] *Id.* at 87.

that the Governor erred in determining that it did, and notwithstanding an ostensible system of *de novo* review even more unlikely that an appellate court would hold that the *nisi prius* tribunal was wrong in its finding in view of the rule that the "judgment shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of witnesses" (R. 162). *Cf., United Steelworkers* v. *United States*, 361 U.S. 39; *United States* v. *National Marine Engineers' Beneficial Assn.*, 294 F. 2d 385 (C.A. 2). And no ultimate state court decision, if ever one should be made, that the strike should not have been illegalized because the requisite jeopardy did not exist, can ever result in restoring or vindicating the destruction of the strike for the period preceding the finding. In short, the state procedure itself is the source of the threat and injury to the federal right, and that threat and injury exists whether the state procedure is rightly or wrongly invoked by state standards. The federal right cannot be protected, its exercise free of state restraint cannot be vindicated, by any challenge, successful or not, to the state procedure on state grounds. The federal question goes to the validity of fastening the state procedure onto the employees at all, and the federal right fundamentally requires that it be totally free of the applicability of the state hamper.

5. Appellee asserts that the "Missouri statute is definitely not a 'comprehensive code for settlement of labor disputes'" (br. p. 44). Consideration of this argument necessarily invites examination of the statute in its entirety. Yet appellee resists this inquiry by its claim that the seizure-no-strike part is severable from the remainder of the statute (br. pp. 19-23). Appellee cannot have it both ways. It cannot claim that the

statute is not comprehensive and at the same time close its scope to scrutiny. Appellee's position is doubly untenable in that, except for relatively marginal aspects of it,[7] the Missouri Supreme Court has validated the statute in its entirety. *State ex rel. State Board of Mediation* v. *Pigg*, 362 Mo. 798, 244 S.W. 2d 75; *Missouri* v. *Local No. 8-6, Oil, Chemical & Atomic Workers Union*, 317 S.W. 2d 309, 315, vacated, 361 U.S. 363. As this Court observed, the Missouri Supreme Court upheld "the constitutionality of provisions of the King-Thompson Act relating to the State Board of Mediation and public hearing panels. . . ." *Local No. 8-6, Oil, Chemical & Atomic Workers Union* v. *Missouri*, 361 U.S. 363, 367, n. 6. It is surprising that appellee should balk at defending what the Missouri Supreme Court has approved, particularly as, having pleaded that the King-Thompson Act lacks comprehensiveness, it has fairly put in issue the scope of the statute in its entirety.

6. Appellee startlingly relies upon *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236—the culminating expression of the preemption doctrine—invoking that language of the opinion which talks of allowance of state regulation of interests "deeply rooted in local feeling and responsibility . . ." (*id.* at 244) (br. pp. 32-33). But none of the cases cited to support the quoted statement include *Amalgamated Association*, and all the cases cited pertain to violent conduct. See

[7] The Missouri Supreme Court has withheld decision upon the validity only "of § 295.090, pertaining to a written labor agreement of a minimum duration and § 295.200, subparagraphs 2, 3, 4 and 5, relating to monetary benefits and loss of seniority." *Missouri* v. *Local No. 8-6, Oil, Chemical & Atomic Workers Union*, 317 S.W. 2d, 309, 323, vacated, 361 U.S. 363. Having swallowed the elephant it is not likely to strain at the gnat.

also, *id.* at 247-248. When *Amalgamated Association* is cited (*id.* at 243, n. 1), it is to support the statement that "When the exercise of state power over a particular area of activity threatened interference with the clearly indicated policy of industrial relations, it has been judicially necessary to preclude the States from acting" (*id.* at 243). That is this case. And, manifesting the continuing and complementary vitality of each, *Amalgamated Association* and *Garmon* united to fashion the result in *In re Green*, 369 U.S. 689.

7. It is revealing that appellee relies explicitly upon the dissent in *Amalgamated Association* for its rationale (br. pp. 39, 40-41). But if the dissent is to become the law the transmutation is for Congress. Exclusion of state action because of congressional occupancy of the field requires only that Congress decide to withdraw in order for the States to enter. Congress has a free choice. Yet it has rejected repeated invitations to vacate the field (our brief pp. 60-68). Now more than ever before "[c]reation of a special classification for public utilities is for Congress, not for this Court." *Amalgamated Association*, 340 U.S. at 392-393.

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* The other cases upon which appellee relies are as wide of the mark (br. p. 34). It requires a breathtaking *non sequitur* to equate this case with mutiny (*Southern Steamship Co.* v. *N.L.R.B.*, 316 U.S. 31), a sit-down strike (*N.L.R.B.* v. *Fansteel Metal Corp.*, 306 U.S. 240), or violence (*Allen-Bradley Local No. 1111* v. *W.E.R.B.*, 315 U.S. 740; *U.A.W.* v. *W.E.R.B.*, 351 U.S. 266). *U.A.W.* v. *W.E.R.B.*, 336 U.S. 245, pertaining to unannounced, intermittent work stoppages for unstated ends, is "not concerned with a traditional, peaceful strike for higher wages" (*U.A.W.* v. *O'Brien*, 339 U.S. 454, 459), and its authority has in any event been virtually drained (*N.L.R.B.* v. *Insurance Agents' International Union*, 361 U.S. 477, 493, n. 23; *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 245, n. 4).

II. MOOTNESS

It is conspicuous that, while urging that the controversy is moot, appellee does not disclaim an intention again to seize the Company in the event of another strike by Union and by that act once more prohibit the strike for the period of seizure. Appellee states only that recurrence of seizure "is purely hypothetical, and in any event would depend upon facts which are presently not before this Court" (br. p. 17). But the Company has been thrice seized upon a threatened strike by the Union, and no differentiating facts have been suggested or exist warranting the slightest assurance against a fourth turn. There is here no discontinuance of a course of conduct but a mere lull in an unabandoned course of conduct. This Court's recent statement applies therefore *a fortiori* to the instant situation: "... the voluntary abandonment of a practice does not relieve a court of adjudicating its legality, particularly where the practice is deeply rooted and long-standing. For if the case were dismissed as moot appellants would 'be free to return to . . . [their] old ways.'" *Gray* v. *O'Hear*, 31 U.S. Law Week 4285, 4287 (S. Ct. March 18, 1963). Appellee has not begun to sustain its "burden," a "heavy one," to show that "'there is no reasonable expectation that the wrong will be repeated.'" *United States* v. *W.T. Grant Co.*, 345 U.S. 629, 633.[9] Furthermore, appellee's assevera-tion that seizure is "temporary" (br. p. 13) gives vivid relevance to the short term order doctrine. That doc-

[9] Amicus Lacledo (br. pp. 11-12) cites *Commercial Cable Co.* v. *Burleson*, 250 U.S. 360, to show that release of seizure terminates the controversy over its legality, but in that case wartime possession of the cable lines was ended after the cessation of hostilities, and obviously resumption of war in 1919 was too attenuated a possiblity to prevent mootness.

trine applies precisely to prevent a merry-go-round of exercise of governmental power sustained long enough to exert its influence but not sufficiently long to determine its validity.[10]

The presence of these classic indicia of a living case —recurrence and a short term order—undercuts appellee's contention that no "subject matter is presently in existence upon which the judgment of this Court can operate" (br. p. 14). The subject matter in vibrant being is the continuing unabated controversy between the parties over the power of the State upon a threatened or actual strike by the Union against the Com-

[10] Amicus Laclede (br. p. 9) would distinguish the short term order doctrine on the ground that it pertains to a "quick, 'ex parte' administrative order. . . ." We are not aware that a short term administrative order is issued without preceding notice and hearing. The short term ICC order in *Southern P. Terminal Co. v. I.C.C.*, 219 U.S. 498, the father of the doctrine, was issued after complaint, answers, "full hearing," and report (*id.* at 506-507). But even if a short term order be indeed "quick" and "'ex parte,'" there is nothing quicker and more ex parte than institution of seizure by the Governor pursuant to the King-Thompson Act. It is preceded neither by notice, hearing, nor any other process, and without more it invalidates the strike. Judicial review of the Governor's determination of jeopardy in a proceeding to enjoin the strike, practically meaningless (*supra*, pp. 9-10), does not in any event distinguish the short term order doctrine, for that doctrine's precise purpose is to secure judicial determination of validity.

We take small comfort from the statement of amicus Kansas City Power and Light Company that the proceeding in *United Steelworkers v. United States*, 361 U.S. 39, "was processed from the filing of the complaint through the issuance of a decision by the United States Supreme Court in a total of eighteen days" (p. 6). In contrast to the gratifying speed in that case, in this case at this writing it has already taken seventeen months to travel the route, and we have no reason to suppose that our efforts at expedition would be more successful a second time round (see our brief p. 81, n. 25).

pany to prohibit the strike by seizure of the utility. The main object of the appeal is, not release from the particular injunction which is but a mere manifestation of the recurring wrong, but to be free from the fetters of a state procedure by which this or another injunction can be fastened on appellants. This Court's judgment affirming or reversing the judgment below on the merits would be addressed to this living controversy and would authoritatively adjudicate it. The force of the judgment of this Court reversing on the merits would operate on the subject matter of this dispute and would still it conclusively without any need for supplementary injunctive relief. *Cf. St. John* v. *Wisconsin Employment Relations Board*, 340 U.S. 411, 414-415. But if injunctive relief were deemed necessary, there is a presently pending suit in the United States District for the Western District of Missouri by the Union against the state officials seeking an injunction, an action brought to a standstill when the three-judge court at the State's behest abstained in deference to determination of the controversy via the state action (Jurisdictional Statement, pp. 45a-54a). This Court's judgment reversing on the merits would provide the predicate for further proceedings in the three-judge court if that were thought appropriate or necessary. Abeyance of the federal action in accordance with the State's request to defer to the state action followed by mootness of the state action by the State's own conduct would constitute procedural perversity. There is no doubt therefore that this Court's judgment on the merits has a viable subject matter upon which to expend its force.

Tacitly recognizing that cessation of a challenged practice by an offender cannot moot the controversy,

appellee would distinguish the settled rule by its assertion that the "instant situation is wholly unlike those in which a *defendant*, by discontinuing the conduct complained of, seeks to avoid the grant of affirmative relief to an injured plaintiff. Here, it was not the defendants (appellants) but the *plaintiff* (the State of Missouri) which sought relief and obtained an injunction" (br. p. 18, emphasis in original). Appellee invokes a sterile formalism unrelated to the reason for the rule. What matters is, not the title by which the contenders enter the lists, but what the fight is about. The fight in this case is about the validity of the State's action in prohibiting an actual or threatened strike by seizure of the utility against which the strike is called. This is the challenged practice which is at the heart of this proceeding however initiated. Appellee's incapacity to moot the controversy by ceasing the practice stems from its role as the actor in perpetrating the wrong, not from its nominal position as plaintiff or defendant. The instant state action is not less viable than the deferred federal action because, as in the state action, appellee began as the plaintiff, and as in the federal action, as the defendant. As this Court has said, "that the government is the respondent, not complainant, does not lessen or change the character of the interests involved in the controversy, or terminate its questions." *Southern P. Terminal Co.* v. *I.C.C.*, 219 U.S. 498, 516. And this thought may properly be elaborated to read "that the government is the respondent in resisting relief from a challenged action it inflicts, not complainant in seeking to impose the challenged action, does not lessen or change the character

of the interests involved in the controversy, or terminate its questions.'"[11]

As a result of the three seizures of the Company's property the Union has been prevented by the State from striking for a total of two years and two months. To say that there is no existing controversy between the Union and the State defies reality. The supremacy

[11] Seeking to buttress appellee's contention, amicus Laclede (br. p. 10) invokes an out-of-context quotation from *Mills* v. *Green*, 159 U.S. 651, 654, repeated in *United States* v. *Hamburg-Amerikanische P. F. A. Gesellschaft*, 239 U.S. 466, 477, that "if the intervening event is owing, either to plaintiff's own act, or to a power beyond the control of either party, the court will stay its hand." But "plaintiff's own act" referred to in the quotation pertains, not to cessation by plaintiff of a challenged act it perpetrated, but to other conduct by plaintiff having no relevance to the instant case. This Court illustrated the presently irrelevant kind of "plaintiff's own act" by its listing of the type in *Mills* v. *Green*, 159 U.S. 651, 654: "For example, appeals have been dismissed by this court when the plaintiff had executed a release of his right to appeal . . .; or when the rights of both parties had come under the control of the same persons . . .; or when the matter has been compromised and settled between the parties . . .; or when pending a suit concerning the validity of the assessment of a tax, the tax was paid . . .; or the amount of the tax was tendered, and deposited in a bank, which by statute had the same effect as actual payment and receipt of the money."

In *Mills* v. *Green*, 159 U.S. 651, 657, where the "whole object" of plaintiff's bill "was to secure a right to vote" at a particular election, the mooting event was the actual conduct of that election before the right to vote in it could be decreed. Contrast *Giles* v. *Harris*, 189 U.S. 475, 484, where plaintiff sought registration as a voter; and the passing of the date of a particular election did not moot the bill, for its "principal object" was "to obtain the permanent advantages of registration. . . ." In *United States* v. *Hamburg-Amerikanische P. F. A. Gesellschaft*, 239 U.S. 466, the mooting event was the advent of World War I. For war and its cessation as a mooting event in general, see Diamond, *Federal Jurisdiction To Decide Moot Cases*, 94 U. Pa. L. Rev. 125, 144-145 (1946).

of law in a federal system demands this Court's determination of the question whether a claimed federal right exists and has been abridged. The time for decision is now.

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